

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

ORDER No. R2-2004-0037

WASTE DISCHARGE REQUIREMENTS AND WATER QUALITY CERTIFICATION FOR:

SCHAEFER HEIGHTS ASSOCIATES

SCHAEFER RANCH PROJECT, DUBLIN, ALAMEDA COUNTY

The California Regional Water Quality Control Board, San Francisco Bay Region, hereinafter Board, finds that:

1. Schaefer Heights Associates (hereinafter the Discharger) proposes to construct a mixed-use residential, commercial, and open space development on a 500-acre site in the City of Dublin (hereinafter Project). The Project consists of the following elements:
 - a. Approximately 328 single-family residential units on about 88 acres;
 - b. Commercial retail/office uses on three parcels of about 5.5 acres;
 - c. A water storage and recycled water storage tank site on about 6.0 acres;
 - d. Infrastructure, including major street rights of way and other public and semi-public facilities, on approximately 30.1 acres;
 - e. Parks and recreation areas, to be owned and managed by the City of Dublin, on approximately 12.8 acres;
 - f. Dedication of approximately 95 acres of the site to the East Bay Regional Park District (EBRPD) as open space lands; and,
 - g. Dedication of approximately 263 acres of the site as private open space.
2. There are approximately 4.2 acres of jurisdictional waters of the United States, including creeks and wetlands, on the Project site. The site's waters of the United States are comprised of:
 - a. 13,300 linear feet (1.4 acres) freshwater seasonal creeks;
 - b. 1.7 acres of 8 freshwater ponds; and,
 - c. 1.1 acres freshwater seasonal wetlands.
3. The Project will result in the direct placement of approximately 7,100 cubic yards of fill into and/or other permanent disturbance of 1.7 of the site's 4.2 acres of jurisdictional waters of the United States, including wetlands, and other waters on the Project site. This fill is comprised of the filling of:
 - a. 4 freshwater ponds (0.5 acres);
 - b. 6,370 linear feet of freshwater creek (0.8 acres); and,
 - c. Freshwater seasonal wetlands (0.4 acres).

4. Waters on the Project site serve as habitat for the federally-listed threatened California Red-Legged Frog (*Rana aurora draytonii*, hereinafter CRLF).
5. **Mitigation Plan:** To mitigate for its permanent fill of 1.7 acres of freshwater wetlands, creeks, and ponds, the Discharger will complete the mitigation proposed in its "Revised Mitigation and Monitoring Plan: Schaefer Ranch Project, Dublin, California, Corps File No. 23054S," dated June 3, 2002, and prepared by LSA Associates, Inc. (hereinafter the Plan), and the Plan's associated documents. The Plan is acceptable to the Board, with the required submittals and revisions listed in the Provisions. The proposed mitigation consists of the following:
 - a. **Freshwater Seasonal Wetlands Creation.** A minimum of 1.1 acres of freshwater seasonal wetlands will be created, on-site or on mitigation lands immediately adjacent to the site, which will be placed under a conservation easement pursuant to this Order;
 - b. **Freshwater Pond Creation.** A minimum of two new ponds that provide new CRLF breeding and rearing opportunities will be created within upper catchment areas that currently do not support such habitat. The ponds will have a combined total area of at least 0.2 acres;
 - c. **Freshwater Pond Enhancement.** The Discharger will enlarge by at least 0.4 acres an existing pond that provides high-quality CRLF habitat; and,
 - d. **Freshwater Creek Enhancement.** The Discharger will implement a comprehensive stream and watershed restoration program (program) on the 358 acres of on-site open space and approximately 248.6 acres of the Machado Easements, located immediately to the north of the Project site. The program will improve stream channel conditions, habitat value, and water quality, and reduce sediment loads in downstream systems. The 358-acre on-site open space includes approximately 5.7 acres for the Project's two proposed storm water basins, which will be managed and maintained separately from the remainder of the easement area. There are approximately 6,930 linear feet (0.6 acres) of jurisdictional seasonal and ephemeral creeks on the on-site open space, and the Machado lands contain approximately an additional 13,725 linear feet of potentially jurisdictional, but not delineated, creeks.
6. **Grazing Management Plans:** The Discharger has submitted a "Grazing Management Plan, Schaefer Ranch Open Spaces and Machado Easements." The plan was prepared by LSA Associates and is dated October 15, 2003. It is acceptable to the Board, with the requirements and revisions listed in the Provisions.
7. **Post-construction stormwater management:** The Discharger has submitted a "Conceptual Stormwater Management Plan for Schaefer Ranch, City of Dublin, California" (hereinafter SWMP), prepared by Balance Hydrologics, and dated January 2003. This plan is acceptable to the Board, with the submittals and revisions listed in the Provisions. The plan includes the following measures to address the Project's post-construction urban runoff impacts:

- i) Construction of two water quality ponds. Together, the ponds would capture and treat stormwater runoff from an area of approximately 273 acres. The ponds will be designed sufficient to treat a total of 8.1 acre-feet of water with a target detention time of 48 hours, with volume provided for sediment accumulation, vegetation, and other design standards as set forth in the SWMP. The Discharger has demonstrated that the ponds have been appropriately sized to meet the standard of treating approximately 80-90 percent of average annual runoff; and,
 - ii) Implementation of standard source controls and site design measures, including storm drain inlet stenciling, street sweeping, covered trash enclosures, and reduced street widths, as specified in the SWMP.
8. The proposed water quality ponds are intended to function as urban runoff treatment systems. Therefore, pursuant to Board Resolution Number 94-102, "Policy on the use of constructed wetlands for urban runoff pollution control," the water quality ponds are, as proposed, not considered Waters of the United States. As long as they are operated and regularly maintained as proposed, maintenance and other work completed in them does not require water quality certification pursuant to Section 401 of the Clean Water Act.
9. **Hydromodification Management:** The Project will alter the runoff hydrograph from the Project site to downstream creeks, including Hollis Creek and upper San Lorenzo Creek. These alterations could cause significant impacts to Hollis Creek. The Project includes measures to address those impacts by detaining flows from the Project as described in the SWMP.
10. **Financial Assurance:** The Discharger has submitted an estimate of the cost of creek, wetland, and pond mitigation implementation, intended to serve as an estimate for the provision of financial assurance adequate to ensure the success of the proposed mitigation. This Order requires the Discharger to submit finalized estimates and appropriate supporting information, acceptable to the Executive Officer, prior to the start of Project construction. This Order requires the Discharger to submit, prior to the start of Project construction, a bond or other appropriate instrument of financial assurance, callable by the Board, in the amount of not less than \$1,150,000.
11. **Long-term Management:** The long-term management of the mitigation sites will be transferred to an appropriate land management group or agency, subject to the approval of the Executive Officer. This Order requires the Discharger to submit, prior to the start of Project construction, Property Analysis Record (PAR) analyses estimating the endowment amount necessary for the appropriate management, in perpetuity, of the conservation areas. This Order requires the Discharger to work with a third party land manager accepted by the Board to finalize the determination of what amount of money is necessary for an endowment fund to adequately finance the monitoring and perpetual management and maintenance of the preserve and endangered species habitat protection areas. The Discharger is required to submit this determination to the Board, acceptable to the Executive Officer. The Discharger has presently estimated that an amount of

\$1,437,060 is necessary, which amount does not yet include the necessary endowment for the lands to be deeded to the EBRPD. This Order requires provision of at least this amount, or a greater amount, as determined through consultation with the accepted land manager and Board staff, and other agency staff, as appropriate.

12. On October 7, 2002, the Discharger submitted an initial application for Water Quality Certification and Waste Discharge Requirements for the Project. That application was subsequently completed by additional submittals.
13. The Board has determined to regulate the proposed discharge of fill materials into waters of the State by issuance of Waste Discharge Requirements (WDRs) pursuant to Section 13263 of the California Water Code (CWC) and 23 CCR §3857, in addition to issuing certification pursuant to 23 CCR §3859. The Board considers WDRs necessary to adequately address impacts and mitigation to beneficial uses of waters of the State from this project, to meet the objectives of the California Wetlands Conservation Policy (Executive Order W-59-93), and to accommodate and require appropriate changes over the life of the project and its construction.
14. The Board, on June 21, 1995, adopted, in accordance with Section 13240 et. seq. of the CWC, a revised Water Quality Control Plan, San Francisco Bay Basin (Basin Plan). This updated and revised Basin Plan was approved by the State Water Resources Control Board and the Office of Administrative Law on July 20, 1995, and November 13, 1995, respectively. A summary of revisions to regulatory provisions is contained in 23 CCR §3912. The Basin Plan defines beneficial uses and water quality objectives for waters of the State, including surface waters and groundwaters. This Order is in compliance with the Basin Plan.
15. The subject wetlands, seasonal creeks, and other waters on the Project site are located in the South Bay Basin. The majority of waters are tributary to San Lorenzo Creek, and thence to San Francisco Bay. Some waters are tributary to Dublin Creek or Martin Canyon Creek, Alamo Creek, the Arroyo de la Laguna, Alameda Creek, and thence to San Francisco Bay. The Basin Plan does not explicitly identify beneficial uses for waters on the Project site. However, the Basin Plan states that "[t]he beneficial uses of any specifically identified waterbody generally apply to all of its tributaries." San Lorenzo Creek has the following existing beneficial uses defined in the Basin Plan: cold freshwater habitat; freshwater replenishment; ground water recharge; fish migration; municipal and domestic supply; water contact recreation; non-contact water recreation; fish spawning; warm freshwater habitat; and wildlife habitat. Alameda Creek has the following beneficial uses as defined in the Basin Plan: agricultural supply; cold freshwater habitat; ground water recharge; fish migration; contact and non-contact water recreation; fish spawning; warm freshwater habitat; and, wildlife habitat. Additionally, waters on the Project site and Machado mitigation site are known to provide habitat for the preservation of rare and endangered species, including breeding and dispersal habitat for the federally listed threatened CRLF.

16. The Basin Plan Wetland Fill Policy (policy) establishes that there is to be no net loss of wetland acreage and no net loss of wetland value when the project and any proposed mitigation are evaluated together, and that mitigation for wetland fill projects is to be located in the same area as the project, whenever possible. The policy further establishes that wetland disturbance should be avoided whenever possible, and if not possible, should be minimized, and only after avoidance and minimization of impacts should mitigation for lost wetlands be considered.
17. The goals of the California Wetlands Conservation Policy (Executive Order W-59-93, signed August 23, 1993) include ensuring "no overall loss" and achieving a "...long-term net gain in the quantity, quality, and permanence of wetland acreage and values...." Senate Concurrent Resolution No. 28 states that "[i]t is the intent of the legislature to preserve, protect, restore, and enhance California's wetlands and the multiple resources which depend on them for benefit of the people of the State." Section 13142.5 of the CWC requires that the "[h]ighest priority shall be given to improving or eliminating discharges that adversely affect...wetlands, estuaries, and other biologically sensitive areas."
18. This Order applies to the temporary and permanent fill and indirect impacts to waters of the State associated with the Project, which is comprised of the components listed in Finding 1. Construction of the project will result in the permanent placement of fill in and/or disturbance of 1.7 acres of jurisdictional waters, including freshwater seasonal wetlands, ponds, and creeks. The permanent impact of this fill on waters was identified as a potentially significant impact in the Environmental Impact Report (hereinafter EIR) certified for the Project.
19. The Discharger has submitted an Alternatives Analysis and supplemental information to show that appropriate effort was made to avoid and then to minimize wetland disturbance, as required by the Basin Plan. Board and federal agency staff held extensive additional discussions with the Discharger regarding its Alternatives Analysis. The Board concurs with the conclusions of the Alternatives Analysis, as supplemented.
20. **Construction-stage Stormwater Management.** Discharges of storm water associated with construction activity will occur. The CEQA documents certified for the Project identify such discharges, including the pollutants associated with them, as a potentially significant impact. The Discharger is responsible for obtaining appropriate permits for these discharges, including complying with National Pollutant Discharge Elimination System (NPDES) permit requirements. This includes complying with the requirements of State Water Resources Control Board Water Quality Order No. 99-08-DWQ, the NPDES General Permit for Storm Water Discharges Associated with Construction Activity (hereinafter General Permit).
21. Discharges of storm water associated with the post-construction operation and maintenance of the Project will occur following its completion. The CEQA documents certified for the Project identify such discharges, including the pollutants associated with

them, as a potentially significant impact. The Discharger is responsible for obtaining appropriate permits for these discharges, including complying with NPDES permit requirements. This includes complying with the requirements placed on the Project under NPDES Permit CAS0029831, the NPDES Municipal Storm Water Permit that covers the City of Dublin. The Discharger has submitted a SWMP for its project that, together with the additional submittals required under this Order, is consistent with the requirements of NPDES Permit CAS0029831, Provision C.3, the permit provisions addressing new and redevelopment projects. This Order requires the Discharger to submit a finalized SWMP prior to the start of Project construction.

22. Because of the Project's proximity to sensitive resources, including special status species habitat, and potential to discharge materials that could significantly impact those resources, this Order requires the Discharger to submit a Storm Water Pollution Prevention Plan or Plans (SWPPPs) for the Project, prepared pursuant to the provisions of the General Permit, at least 60 days prior to the beginning of construction for the Project.
23. Discharges of ground water or other non-storm water during construction may be required. This Order considers such discharges covered by the General Permit, contingent on submittal of an acceptable discharge plan at least 30 days prior to such a discharge.
24. The California Environmental Quality Act (CEQA) requires all projects approved by State agencies to be in full compliance with CEQA, and requires a lead agency to prepare an appropriate environmental document (e.g., Environmental Impact Report or Negative Declaration) for such projects. The Board finds, after review of the Project's environmental documents, that all environmental impacts have been identified and, with compliance with the conditions of this Order, will be mitigated to a level of insignificance. On July 9, 1996, the City of Dublin certified the "Final Environmental Impact Report for Schaefer Ranch Project/General Plan Amendment."
25. On December 22, 2002, the U. S. Army Corps of Engineers (Corps) issued a Public Notice for a proposed Individual Permit for the Project (Corps File No. 27205S) pursuant to Section 404 of the Clean Water Act.
26. On July 7, 2003, the United States Fish and Wildlife Service (USFWS) issued a Biological Opinion (BO) for the Project (USFWS File No. 1-1-02-F-0293). The BO states that the proposed Project is not likely to jeopardize the continued existence of the CRLF, with the implementation of the mitigation measures specified in the BO.
27. Pursuant to 23 CCR Sections 3857 and 3859, the Board is issuing WDRs and Water Quality Certification for the Project as described herein.
28. The Board has notified the Corps, the City of Dublin, USFWS, CDFG, and other interested agencies and persons of its intent to prescribe WDRs and Water Quality

Certification for this discharge.

29. The Board, in a public meeting, heard and considered all comments pertaining to the discharge.
30. This Project file is maintained at the Board under File No. 2199.9446 and Site No. 02-01-C0749.

IT IS HEREBY ORDERED, pursuant to the provisions contained in Division 7 of the California Water Code and regulations adopted thereunder, that Schaefer Heights Associates shall comply with the following:

A. Discharge Prohibitions

1. The direct discharge of wastes, including rubbish, refuse, bark, sawdust, or other solid wastes into surface waters or at any place where they would contact or where they would be eventually transported to surface waters, including flood plains, is prohibited.
2. The discharge of floating oil or other floating materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters is prohibited.
3. The discharge of silt, sand, clay, or other earthen materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters is prohibited.
4. The wetland fill activities subject to these requirements shall not cause a nuisance as defined in CWC §13050(m).
5. The discharge of decant water from active dredging or fill sites and dredged material stockpile or storage areas to surface waters or surface water drainage courses is prohibited, except as conditionally allowed following the submittal of a discharge plan or plans as described in the Provisions.
6. The groundwater in the vicinity of the Project shall not be degraded as a result of the Project activities or placement of fill for the Project.
7. The discharge of materials other than storm water, which are not otherwise regulated by a separate NPDES permit or allowed by this Order, to waters of the State is prohibited.
8. The discharge of drilling muds to waters of the State, or to where such muds could be discharged to waters of the State, is prohibited.
9. The discharge of earthen fill, construction material, concrete, aggregate, rock rip-rap, and/or other fill materials to waters of the State is prohibited, except as expressly allowed

herein.

B. Receiving Water Limitations

1. The discharges shall not cause the following conditions to exist in waters of the State at any place:
 - a. Floating, suspended, or deposited macroscopic particulate matter or foam in concentrations that cause nuisance or adversely affect beneficial uses;
 - b. Bottom deposits or aquatic growths to the extent that such deposits or growths cause nuisance or adversely affect beneficial uses;
 - c. Alteration of temperature, turbidity, or apparent color beyond present natural background levels;
 - d. Visible, floating, suspended, or deposited oil or other products of petroleum origin; and
 - e. Toxic or other deleterious substances to be present in concentrations or quantities which will cause deleterious effects on wildlife, waterfowl, or other aquatic biota, or which render any of these unfit for human consumption, either at levels created in the receiving waters or as a result of biological concentration.
2. The discharges shall not cause nuisance, or adversely affect the beneficial uses of the receiving water.
3. The discharges shall not cause the following limits to be exceeded in waters of the State at any one place within one foot of the water surface:
 - a. Dissolved Oxygen: 5.0 mg/L, minimum

The median dissolved oxygen concentration for any three consecutive months shall not be less than 80% of the dissolved oxygen content at saturation. When natural factors cause concentrations less than that specified above, then the discharges shall not cause further reduction in ambient dissolved oxygen concentrations.
 - b. Dissolved Sulfide: 0.1 mg/L, maximum
 - c. pH: The pH shall not be depressed below 6.5 nor raised above 8.5, nor caused to vary from normal ambient pH by more than 0.5 pH units.
 - d. Un-ionized Ammonia: 0.025 mg/L as N, annual median; and
0.16 mg/L as N, maximum

- e. Nutrients: Waters shall not contain biostimulatory substances in concentrations that promote aquatic growths to the extent that such growths cause nuisance or adversely affect beneficial uses.

C. Provisions

1. The Discharger shall comply with all Prohibitions and Provisions of this Order immediately upon adoption of this Order or as provided below.
2. The Discharger shall submit to the Board copies of all necessary approvals and/or permits for the Project and mitigation projects from applicable government agencies, including, but not limited to, CDFG, USFWS, City of Dublin, EBRPD, and Corps, for each Project component as applicable to that component, prior to the start of construction on that component.

Project Implementation Deadlines

3. No construction shall commence on any Project component until all required documents, reports, plans, and studies required in the Provisions associated with that component have been submitted to and found acceptable by the Executive Officer. For example, mass grading for the Project may begin, within the timelines of the related Provisions, when the required financial assurance documents, SWPPP, and other documents required in the Provisions have been accepted by the Executive Officer. In all cases where the Discharger is required to make a submittal acceptable to the Executive Officer, the Executive Officer may determine that construction may begin once the submittal has been accepted and/or sooner than the specified number of days for the submittal prior to the beginning of construction.
4. Not later than 60 days prior to the beginning of construction, the Discharger shall submit, acceptable to the Executive Officer, a Plan that includes all appropriate Mitigation Plan implementation details that are not presently included in the Mitigation Plan, as described below.

The Plan must include:

- a. Proposed channel designs and earthwork for all creeks, ponds, and wetlands, including appropriate longitudinal and cross sections and plan views;
- b. A detailed planting plan, including species lists, plant sizes and numbers, and planting designs relative to cross sections and plan views;
- c. An irrigation plan for the mitigation areas where irrigation is proposed;
- d. Specific details and plans for any creek sections that will be culverted, bridged, or otherwise crossed or immediately adjoined by roads, paths, or similar improvements, including livestock crossings;
- e. A finalized fencing plan that shows that all creeks on the site, which includes the project site and Machado easement and non-easement lands, will be appropriately

- fenced to exclude livestock, with appropriate provision made for necessary livestock crossings and upland water sources. The plan shall ensure that the fencing will provide a minimum buffer of the greater of: 50 feet on each side from the edge of ordinary high water, or, a 2:1 (horizontal:vertical) line drawn on each side from the edge of ordinary high water until it daylight through the ground surface, plus 20 feet. The applicant may propose a revised buffer width for instances, acceptable to the Executive Officer, where the site topography, public safety factors such as fire control, or other overriding relevant factors clearly indicate that would be appropriate, while still excluding livestock from the creeks and an appropriate buffer. The following site creeks are not subject to fencing, as listed in the Plan: Those short reaches of creek located only on the hillside immediately above Interstate 580; and, the creek draining to the east from the site;
- f. A finalized financial assurances proposal with all appropriate detail on financial assurances being provided to ensure the establishment and success, in perpetuity, of the proposed mitigation, and including appropriately detailed finalized estimates on the amount of the related financial assurances;
 - g. A schedule providing for mitigation construction to commence prior to or concurrent with the start of Project construction. As described in the present Plan, the schedule shall provide for all mitigation to be completed within 2 years of the start of mitigation construction, with the majority completed within 1 year;
 - h. Requirements for the monitoring of CRLF presence in site and mitigation ponds, as described in the Discharger's letters of January 16, 2004, and March 23, 2004;
 - i. Revisions incorporating the riparian mitigation monitoring proposed in the Discharger's letters of January 16, 2004 and March 23, 2004. The proposed observations of stream stability and changes in morphology shall include, but may not necessarily be limited to, establishment of a number of monumented cross-sections along each stream reach, and completion of longitudinal surveys, each of which shall be surveyed on the schedule proposed by the Discharger in its letter. The proposed observation of woody and wetland vegetation shall be completed according to the protocols for such surveys presented in the Mitigation Plan, or similarly effective protocols;;
 - j. Appropriate plans, design details, and other information for the proposed work at the Machado Instream Structure, as proposed in the Discharger's letter of January 16, 2004;
 - k. Revision of the Plan to more specifically state which riparian reaches will be monitored, including reaches that are actively being restored and those that are only being fenced. These reaches may be coterminous. This information shall be shown on a figure and in a tabular or sufficiently descriptive list format; and,
 - l. All other information related to this Provision, as appropriate.
5. As-built plans for the mitigation sites shall be prepared as per the Mitigation Plan, and submitted to the Board within 12 weeks of the completion of mitigation site construction.
 6. Annual monitoring reports shall be submitted to the Board by December 15 of each monitoring year, as per the Mitigation Plan. The Discharger shall continue to submit

annual monitoring reports until the sites have met their performance standards and final success criteria and the Executive Officer has accepted in writing a notice of mitigation completion. Monitoring reports shall be prepared as described, and shall also include the proposed annual grazing and special-status species monitoring, including photographs, residual dry matter monitoring results, summaries of animal unit months (or other appropriate measure of livestock grazing) grazed per grazing unit, analyses of trends over time, and all other information, as appropriate.

7. Not later than 60 days prior to the beginning of construction, the Discharger shall submit, acceptable to the Executive Officer, a finalized Grazing Management Plan that addresses grazing on the site, comprised of the Project site and Machado easement and non-easement lands. The Grazing Management Plan shall include a copy of the finalized fencing plan from the Mitigation Plan and all appropriate details for livestock crossings, provision of upland watering sources, and related information, as appropriate. For the project site and Machado easement lands, the Grazing Management Plan shall specify minimum residual dry matter numbers equivalent to or greater than those for light or moderate grazing as specified in East Bay Municipal Utility District's "East Bay Watershed Range Resource Management Plan," dated December 2001 (p. 2-20).
8. Not later than 60 days prior to the beginning of construction, the Discharger shall submit, acceptable to the Executive Officer, draft conservation easements for all mitigation areas, including finalized locations of the on-site and Machado lands easements. The drafts shall be finalized within six (6) months of the date of submittal of acceptable draft easements. Final executed easements, acceptable to the Executive Officer, shall be submitted within eight (8) months of the date of submittal of acceptable draft easements. The easements shall follow the borders outlined in the Grazing Management Plan.
9. Not later than 60 days prior to the beginning of construction, the Discharger shall submit, acceptable to the Executive Officer, a final SWMP. Should the final SWMP designs be significantly changed from those in the conceptual SWMP, then the final SWMP must be brought before the Board for its consideration and approval. The SWMP implementation plan shall include the following:
 - a. A work plan and schedule, acceptable to the Executive Officer, of final designs for the proposed regional water quality ponds, and including a schedule for the ponds' construction and completion concurrent with the completion of Project construction, or not more than 24 months after the beginning of Project construction, whichever comes first. Final designs shall include earthwork, drainage, and planting plans and appropriate design details—including, but not limited to, energy dissipation into and out of each basin, outflow control structures, overflow structures/spillways, trash racks, and any subdrains--maintenance access road plans, fencing plans, an analysis of side slopes demonstrating that the side slopes will be appropriately stable, and all other information, as appropriate. This shall also include a work plan and schedule for the submittal of an Operations and Maintenance (O&M) plan, as described in the SWMP, that addresses O&M for the regional ponds;

- b. An appropriately detailed description of the proposed funding amounts and mechanism for that funding, sufficient to ensure the appropriate O&M of the regional ponds for their lifetime; and,
 - c. Reference to potential for increased loss of capacity of the flood control channel and subsequent increased needs and costs for dredging as an adverse impact of sediment production at the site.
10. Not later than 60 days prior to the beginning of construction, the Discharger shall submit, acceptable to the Executive Officer, proof of financial assurance adequate to ensure the success of the proposed creek and wetland mitigation as described in the Findings. This may consist of a bond, certificate of deposit, or other instrument callable by the Board in the event of creek and/or wetland mitigation failure. This financial assurance shall be no less than \$1,150,000.
11. Not later than 60 days prior to the beginning of construction, the Discharger shall submit, acceptable to the Executive Officer, a draft agreement with a specific entity or entities appropriate to manage the conservation areas in perpetuity. Upon the Executive Officer's acceptance of the draft agreement, the Executive Officer may determine that construction may begin sooner than 60 days after submittal of the agreement. The draft shall be finalized within six (6) months of the date of submittal of an acceptable draft agreement and a final executed agreement, acceptable to the Executive Officer, shall be submitted within eight (8) months of the date of submittal of an acceptable draft agreement. The finalized draft and final agreements shall include a determination regarding what amount of money is necessary for an endowment fund to adequately finance the monitoring and perpetual management and maintenance of the conservation areas. This amount shall be not less than \$1,437,060, which does not yet include the estimated amount necessary to fund the long-term management of lands to be deeded to EBRPD.
12. Not later than 60 days prior to the beginning of construction of the Project, or any project component, should the project be constructed in steps, the Discharger shall submit, acceptable to the Executive Officer, a SWPPP to address the Project's expected construction stage impacts. The SWPPP shall be prepared according to the requirements and guidance of State Water Resources Control Board Water Quality Order No. 99-08-DWQ, the General Permit, as may subsequently be reissued, amended, or revised.
13. Any changes to the final mitigation plans referenced in the Provisions must be approved in writing by the Executive Officer.

Notice of Mitigation Completion

14. When the Discharger has determined that the mitigation has achieved the performance standards and final success criteria specified in the Mitigation Plan, it shall submit a notice of mitigation completion (notice), acceptable to the Executive Officer. The notice shall include a status report on the implementation of the long-term maintenance and management portion of the Grazing Management Plan, which is the document that will

contain the long-term management plans, and a description of the status of the mitigation component that has been determined to be successful. After acceptance of the notice in writing by the Executive Officer, the Discharger's submittal of annual mitigation monitoring reports for that mitigation component is no longer required.

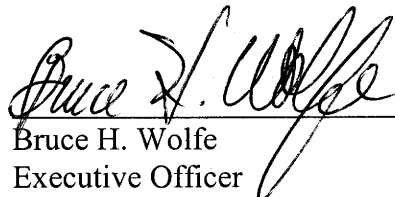
Other Provisions

15. All reports pursuant to these Provisions shall be prepared under the supervision of suitable professionals registered in the State of California.
16. The Discharger shall immediately notify the Board by telephone whenever an adverse condition occurs as a result of this discharge. Such a condition includes, but is not limited to, a violation of the conditions of this Order, a significant spill of petroleum products or toxic chemicals, or damage to control facilities that would cause noncompliance. Pursuant to CWC §13267(b), a written notification of the adverse condition shall be submitted to the Board within two weeks of occurrence. The written notification shall identify the adverse condition, describe the actions necessary to remedy the condition, and specify a timetable, subject to the modifications of the Board, for the remedial actions.
17. Should discharges of otherwise uncontaminated ground water contaminated with suspended sediment or other non-storm water that has accumulated in utility trenches or other portions of the Project be required, where such discharges are not otherwise covered by an applicable NPDES permit, such discharges may be considered covered by the General Permit, following the Discharger's submittal of a discharge/treatment plan, acceptable to the Executive Officer, at least 30 days prior to such a discharge.
18. The Discharger shall notify the Board in writing at least 30 days prior to actual start dates for each Project component (i.e., prior to the start of grading or other construction activity for any Project component, including the creek and wetland mitigation components).
19. The Discharger shall at all times fully implement and comply with the engineering plans, specifications, and technical reports submitted with its application for water quality certification and the completed report of waste discharge, and as may subsequently be submitted to comply with this Order.
20. The Discharger is considered to have full responsibility for correcting any and all problems that arise in the event of a failure that results in an unauthorized release of waste or wastewater.
21. The discharge of any hazardous, designated or non-hazardous waste as defined in Title 23, Division 3, Chapter 15 of the California Administrative Code, shall be disposed of in accordance with applicable state and federal regulations.

22. The Discharger shall remove and relocate any wastes that are discharged at any sites in violation of this Order.
23. In accordance with CWC §13260, the Discharger shall file with the Board a report of any material change or proposed change in the ownership, character, location, or quantity of this waste discharge. Any proposed material change in operation shall be reported to the Executive Officer at least 30 days in advance of the proposed implementation of any change. This shall include, but not be limited to, all significant new soil disturbances, all proposed expansion of development, or any change in drainage characteristics at the Project site. For the purpose of this Order, this includes any proposed change in the boundaries of the area of wetland/waters of the State to be filled.
24. The following standard conditions apply to this Order:
 - a. Every certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to CWC §13330 and 23 CCR §3867.
 - b. Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to 23 CCR §3855(b) and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
 - c. Certification is conditioned upon total payment of any fee required pursuant to 23 CCR §3833 and owed by the discharger.
25. An annual fee for WDRs pursuant to Section 13260 of the California Water Code is required.
26. The Discharger shall maintain a copy of this Order at the Project site so as to be available at all times to site operating personnel and agencies.
27. The Discharger shall permit the Board or its authorized representative at all times, upon presentation of credentials:
 - a. Entry onto Project premises, including all areas on which wetland fill or wetland mitigation is located or in which records are kept.
 - b. Access to copy any records required to be kept under the terms and conditions of this Order.

- c. Inspection of any treatment equipment, monitoring equipment, or monitoring method required by this Order.
 - d. Sampling of any discharge or surface water covered by this Order.
28. This Order does not authorize commission of any act causing injury to the property of another or of the public; does not convey any property rights; does not remove liability under federal, state, or local laws, regulations or rules of other programs and agencies, nor does this Order authorize the discharge of wastes without appropriate permits from other agencies or organizations.
29. The Board will consider rescission of this Order upon Project completion and the Executive Officer's acceptance of notices of completion of mitigation for all mitigation, creation, and enhancement projects required or otherwise permitted now or subsequently under this Order.

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is a full, complete, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on May 19, 2004.



Bruce H. Wolfe
Executive Officer